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Decision no. 24/2005

Application

Applicant, Status

Rosa W., Recommendation

Public owner

Stadt Wien

Type of property

immovable

Real estate in

KG Eßling (01654), Wien, Wien | [show on map](#)

Decision

Number

24/2005

Date

20 Sep 2005

Reasons

Outside the jurisdiction of the Arbitration Panel or the scope of application of the GSF Law
Newly available evidence pursuant to Sec. 32 (2) item 2 of the GSF Law

Type

substantive

Decision in anonymous form

Entscheidung 24 2005 (PDF, 148.07 KiB)

English translation: Decision 24 2005 (PDF, 152.36 KiB)

Press release

Press Release Decision No. 24/2005

Vienna, former airfield Aspern

On 20 September 2005 the Arbitration Panel for In Rem Restitution recommended the restitution of a real-estate property in Aspern, which currently belongs to the City of Vienna. The Arbitration Panel has arrived at this conclusion after the consideration of the relevant research results of the Austrian Historical Commission regarding the so-called "Operation Gildemeester".

In March 1938 the claimed real-estate property was owned by the Jewish lawyer Dr. R. In August 1938 family R., among them the present applicant, joined the so-called emigration operation Gildemeester. The purpose of this operation, which was mainly concentrated on Vienna and Graz, was to organize the emigration of needy persons who were not members of the Jewish Community but were considered Jews under the Nuremberg Laws. Wealthy Jews were supposed to entrust the banking house K., assigned as trustee by the NS-authorities, with their complete property. The trustee was to be responsible for the administration and utilization of the property while a determined percentage of this property was to be earmarked for the financing of the emigration operation. In return, the contributors to the trust fund - approximately 100 Jewish families with around 300 depositors - hoped for a faster process property liquidation and a preferential treatment concerning their emigration.

In April 1940, two years after joining the Operation Gildemeester, Dr. R. signed a contract for sale with the German Reich. The property concerned was of interest to the German Luftwaffe (air force) due to the planned extension of the maneuvering area next to the Vienna-Aspern

airport. In 1942, together with his wife, Dr. R. was deported to Theresienstadt where, he died in October 1943.

In 1947 the restitution proceedings were initiated by the heirs of Dr. R., among them the current applicant. Since the real estate property, which was localized in the Soviet zone, was considered "German property", an approval of the Soviet side was necessary to conclude the restitution procedure. Due to the lack of such an approval, the procedure could only be continued and finalized after the signing of the State Treaty in 1955. Based on the Third State Treaty Implementation Act, the lower authorities rejected the claim to restitution. This legal opinion was finally confirmed in October 1963 by the Higher Administrative Court. The fact that Dr. R. had personally signed the sale contract with the Luftwaffe was decisive for the restitution courts. The Arbitration Panel had to analyze these rejecting decisions in detail since the General Settlement Fund Law allows the reopening of already decided cases only in exceptional cases.

It is the Arbitration Panel's legal assignment to take the findings of the Austrian Historical Commission into consideration. The Arbitration Panel's decision is based on the study "Venus/Wenck, Die Entziehung jüdischen Vermögens im Rahmen der Aktion Gildemeester. Wien, 2004 (Venus/Wenck, The Confiscation of Jewish Property during the Operation Gildemeester)". For the first time, this study deals in an extensive manner with the involvement of the NS-regime and the movements of property within the Operation Gildemeester. Through this the true character of the operation was disclosed. According to the Arbitration Panel a confiscation lies already within the property transfer by Dr. R. to banking house K. This is due to the fact that for this particular case the occurrences connected to the joining of the Operation Gildemeester have been sufficiently documented. From this moment on Dr. R. was stripped of any kind of possibility of influencing the sale contract. Neither do the regulations of the Third State Treaty Implementation Act conflict with a restitution, since the property confiscation, which took place within the Operation Gildemeester, occurred only on the grounds of NS-persecution.

For use by media; not legally binding upon the Arbitration Panel for In Rem Restitution.
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